

**Department Of Marine Resources Amendment to LD 1857
February 18th, 2004**

Proposed new language indicated in *italics*.

Sec. 5. 12 MRSA §6072 sub-§7-A is amended to read:

7-A. Decision. In evaluating the proposed lease, the commissioner shall take into consideration the number and density of aquaculture leases in an area and may grant the lease if the proposed project meets the following conditions as defined by rule:

- A. Will not interfere with the ingress and egress of riparian owners;
- B. Will not unreasonably interfere with navigation;
- C. Will not unreasonably interfere with fishing or other uses of the area ~~taking into consideration the number and density of aquaculture leases in an area.~~ For the purposes of this paragraph, “fishing” includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, provided that the resource is commercially significant and subject to a pollution abatement plan that predates the lease application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years;
- D. Will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna;
- E. The applicant had demonstrated that there is an available source of organisms to be cultured for the lease site;
- F. The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of ~~municipally owned, state owned or federally owned beaches and parks or municipally owned, state owned or federally owned docking facilities;~~ beaches, parks, docking facilities owned by federal, state or municipal governmental agencies or certain conserved lands. For purposes of this paragraph, “conserved lands” shall mean land in which fee ownership has been acquired by the local, state or federal government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property.

The Maine State Planning Office shall maintain a list of conservation lands as defined above. DMR will request this information from SPO prior to any pre-application scoping session held.

G. Will not result in unreasonable impact from noise or light at the boundaries of the lease site; and

H. Upon the implementation of rules, the lease must be in compliance with visual impact criteria adopted by the commissioner relating to color, height, shape and mass.

The commissioner shall adopt rules to ~~quantify permissible impact under paragraph G and to~~ establish noise, light and visual impact criteria under paragraphs G and H, which are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 6. 12 MRSA §6072 sub-§12 is amended to read:

12. Renewal. The commissioner shall renew a lease if:

- A. The commissioner receives, at least 90 days prior to the termination of a lease, an application for renewal that includes information on the type and amount of aquaculture to be conducted during the new lease term;
- B. The lessee has complied with the lease agreement during the term of the lease;
- C. The commissioner determines that renewal of the lease is in the best interest of the State;
- D. The renewal will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than ~~250~~ 500 acres; and
- E. The lease is not being held for speculative purposes.

When aquaculture has not been routinely or substantially conducted on a lease that is proposed for renewal, the commissioner may renew the lease, as long as the proposed renewal will continue to meet the criteria for approval in subsection 7-A.

~~A lease renewal is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4. Public notice must be given as required under subsection 6 and a hearing must be held if it is requested in writing by 5 persons.~~

The commissioner shall provide notice of a proposed lease renewal as required under subsection 6. A person may provide to the commissioner comments on the proposed lease renewal within 30 days of receipt of notice, or within 30 days of publication of notice. A public scoping session, as defined in rule, must be held if it is requested in writing by 5 or more persons.

The commissioner may hold a public hearing on a proposed lease renewal. If a hearing is held, it shall be an adjudicatory proceeding held in accordance with Title 5, chapter 375, subchapter 4.

Renewal decisions by the Department shall be made in writing and shall state findings of fact with respect to the criteria established in sub-§12 A-E.

Sec. 7. 12 MRSA §6072 sub-§12-A is amended to read:

12-A. Transferability. A lease may be transferred to another person for the remaining portion of its term subject to the following conditions.

A. Lease transfers shall be subject to the same procedural requirements as initial applications, except that a public hearing is not mandatory ~~unless requested in writing by 5 persons~~. The commissioner shall provide notice of a proposed lease transfer as required under subsection 6. A person may provide to the commissioner comments on the proposed lease transfer within 30 days of receipt of notice, or within 30 days of publication of notice. A public scoping session, as defined in rule, must be held if it is requested in writing by 5 or more persons.

The commissioner may hold a public hearing on the proposed lease transfer. If a hearing is held, it shall be an adjudicatory proceeding held in accordance with Title 5, chapter 375, subchapter 4.

Decisions by the Department regarding the transfer of leases shall be made in writing and shall state findings of fact with respect to the criteria established in paragraph B.

B. The commissioner may grant lease transfers if the commissioner determines that:

- (1.) The change in lessee does not violate any of the standards in subsection 7;
- (2.) The transfer is not intended to circumvent the intent of subsection 8;
- (3.) The transfer is not for speculative purposes; and
- (4.) The transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than ~~250~~ 500 acres.

Sec. 11. 12 MRSA §6673 is amended to read:

§6673. Municipal leasing of flats

A municipality, which has established a shellfish conservation program as provided under section 6671, may lease areas in the intertidal zone to the extreme low water mark, within the municipality for the purpose of shellfish aquaculture. A municipality may grant a lease to any person. Municipal authority to grant a lease under this section does not limit in any way the authority of the commissioner to issue leases in the intertidal zone in accordance with sections 6072, 6072-A and 6072-B.

~~1. **Municipal procedure.** A lease application written on a form supplied by the commissioner may be approved by the municipal officers if they find that it conforms to the shellfish program, that it will not cause the total area under lease to exceed 1/4 of all the municipal intertidal zone that is open to the taking of shellfish and that granting it is in the best interests of the municipality. On approval, the lease must be forwarded to the commissioner.~~

1. **Application.** The municipality shall review an application for a municipal lease on a form supplied by the municipality. The municipality shall publish a summary of the application in a newspaper of general circulation in the area of the proposed lease. A person may provide comments to the municipality on the proposed municipal lease within 30 days of publication of the lease summary.

Prior to granting a lease, a municipality shall hold a public hearing in accordance with procedures established in ordinances adopted in sub-§3.

~~2. **Department procedure for review and approval.** The commissioner shall use the same procedure and the same grounds for approval as required for aquaculture leases under section 6072, except:~~

- ~~A. Preference shall be given to municipal leases;~~
- ~~B. No rent shall be set, but there shall be an annual municipal lease fee of not less than \$1 per acre;~~
- ~~C. The municipality may establish the conditions and limits on the lease; and~~
- ~~D. The advice and consent of the advisory council shall not be required.~~

2. **Decision.** A lease may be approved by the municipal officers if they find the proposed project meets the following criteria. Findings on each of the criteria shall be provided in writing.

- A. The lease conforms to the municipality's shellfish conservation program;
- B. The lease will not cause the total area under the lease to exceed 1/4 of all the municipal intertidal zone that is open to the taking of shellfish;
- C. Granting the lease is in the best interests of the municipality;
- D. The lease will not unreasonably interfere with ingress and egress of riparian landowners within 1,000 feet of the lease;
- E. The lease will not unreasonably interfere with navigation;
- F. The lease will not unreasonably interfere with fishing or other uses of the area

G. The lease will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna;

H. The applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; and

I. The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally owned, state-owned or federally owned beaches and parks or municipally owned, state-owned or federally owned docking facilities.

3. Municipal Leases. *Prior to issuing any lease pursuant to this section, the municipality shall adopt ordinances that establish procedures for consideration of the proposed lease under the decision criteria in sub-§2 including provisions for a public hearing process. An ordinance proposed by a municipality under this section must be approved in writing by the commissioner prior to its adoption.*

On approval, the lease must be forwarded to the DMR commissioner. The municipality may charge a lease rental fee not to exceed \$50 per acre. The municipality may establish the conditions and limits on the lease. Leases may be granted for a period of up to ten years and shall be renewable upon application by the leaseholder.

The terms and conditions of a municipal lease shall be monitored and enforced by the municipality.

4. Renewals. *Public notice must be given as required under subsection 1 and a hearing must be held if it is requested in writing by 5 or more persons. If a public hearing is required it must be held in accordance with procedures established in ordinances adopted in sub-§3. Renewals shall be granted provided the lease continues to meet the criteria of subsection 2 of this section. The findings of the municipality regarding the criteria in subsection 2 must be in writing.*

Sec. 12. 38 MRSA §3 is amended to read:

§3. Mooring sites

In all harbors wherein channel lines have been established by the municipal officers, as provided in section 2, and in all other coastal and tidal waters, harbors and great ponds where mooring rights of individuals are claimed to be invaded and protection is sought of the harbor master, the harbor master shall assign and indicate only to the masters or owners of boats and vessels the location that they may occupy for mooring purposes and shall change the location of those moorings from time to time when the crowded condition of that harbor or great pond, the need to conform to section 7-A or other conditions render the change desirable.

Unless permitted by an ordinance adopted under section 3-A, mooring assignments may not be transferred. Assignments may not be rented unless the provision for rental was part of the agreement when the mooring was assigned.

Assignment of these mooring privileges does not confer any right, title or interest in submerged or intertidal lands owned by the State. To the extent that there is any inconsistency between this subchapter and any law which establishes or otherwise provides for a port authority, board of harbor commissioners or similar authority for any coastal waters of the State, that inconsistency shall be resolved in favor of this subchapter.

Whenever practicable, the harbor master shall assign mooring privileges in those waters where individuals own the shore rights to a parcel of land, are masters or owners of a boat or vessel and are complainants, and shall locate suitable mooring privileges therefore for boats and vessels, temporarily or permanently, as the case may be, fronting their land, if so requested, but not to encroach upon the natural channel or channels established by municipal officers; provided that not more than one mooring may be assigned to any shore-front parcel of land under this privilege. Notwithstanding section 11, persons who, prior to January 1, 1987, owned shore rights of at least 100 feet of frontage regardless of the size of the lot shall have mooring privileges assigned according to this section. The limitation of one mooring assigned under this privilege shall not prevent the owner of a shore-front parcel from receiving additional mooring assignments under the allocation system for all other residents.

A harbor master may refuse to assign mooring privileges to any vessel or boat owner or master who has not paid any fee, charge for services, forfeiture or penalty levied pursuant to this subchapter.

Municipalities do not have jurisdiction over the siting or specifications of structural moorings used to secure aquaculture equipment within the boundaries of a lease site issued pursuant to §6072, §6072-A, or §6072-B.